

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71635; File No. SR-NYSEArca-2014-18)

February 28, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Newfleet Multi-Sector Income ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 26, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect changes to the means of achieving the investment objective applicable to the Newfleet Multi-Sector Income ETF (the “Fund”). The shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (“Shares”) of the Newfleet Multi-Sector Income ETF, which are offered by AdvisorShares Trust (the “Trust”),⁴ under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁵ The investment manager to the Fund is AdvisorShares Investments LLC (the “Adviser”). Newfleet Asset Management, LLC is the sub-adviser to the Fund (“Sub-Adviser”).

⁴ See Securities Exchange Act Release No. 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR-NYSEArca-2013-01) (order approving listing and trading on the Exchange of the Newfleet Multi-Sector Income ETF) (“Prior Order”). See also Securities Exchange Act Release No. 68666 (January 16, 2013), 78 FR 4960 (January 23, 2013) (SR-NYSEArca-2013-01) (“Prior Notice,” and together with the Prior Order, the “Prior Release”). The Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

⁵ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On June 25, 2012 the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the] [sic] Fund (File Nos. 333-157876 and 811-22110) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (File No.

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Adviser and Sub-Adviser will utilize to implement the Fund’s investment objective, as described below.⁶

The Prior Release stated that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (e.g., bank loans). Going forward, the Fund proposes that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser, consistent with Commission guidance.⁷ Thus, only those Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser would be included in the limitation of 15% of net assets in illiquid assets.⁸

The Adviser has represented that it will invest generally in loan participation interests, including bank loans, that it deems highly liquid, with readily available prices.⁹

812-13677) (“Exemptive Order”).

⁶ The changes described herein will be effective upon filing with the Commission of another amendment to the Trust’s Registration Statement. See note 4 [sic], supra. The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

⁷ See note 24 of the Prior Notice.

⁸ Currently, Rule 144A securities and loan participation interests, including bank loans, are subject to the Fund’s 15% limitation on holdings in illiquid assets, whether or not such loan participation interests are deemed illiquid by the Adviser.

⁹ The Exchange notes that the Commission has previously approved listing and trading on the Exchange of the SPDR Blackstone/GSO Senior Loan ETF which principally holds senior loans, including bank loans. See Securities Exchange Act Release No. 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR-NYSEArca-2013-08). The Commission also has recently issued a notice of filing and immediate effectiveness of a proposed rule change relating to investments in leveraged loans by the Peritus High Yield

In reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer.)

The Exchange notes that the Commission has approved similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.¹⁰ The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security and loan participation interest based on the Fund's valuation procedures to oversee liquidity and valuation concerns.¹¹

The Fund will invest in loan participation interests, including bank loans, rated C or higher by a nationally recognized statistical rating organization ("NRSRO") or is unrated but considered to be of comparable quality by the Adviser or Sub-Adviser.¹² The Fund will not

ETF. See Securities Exchange Act Release No. 70284 (August 29, 2013), 78 FR 54715 (September 5, 2013) (SR-NYSEArca-2013-83). In each case, loans deemed illiquid by the respective fund adviser are subject to the respective fund's 15% limitation on holdings in illiquid assets. However, the funds may otherwise hold loans not deemed illiquid by the respective fund adviser.

¹⁰ See, e.g., Securities Exchange Act Release No. 70282 (August 29, 2013), 78 FR 54700 (September 5, 2013) (order approving listing and trading on the Exchange of First Trust Inflation Managed Fund).

¹¹ As noted in the Prior Release, the Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Such securities include bank loans and other securities enumerated in the Prior Release.

¹² In determining whether a security is of "comparable quality", the Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features

invest in loan participation interests that are in default at time of purchase. The Fund will only invest in U.S. dollar-denominated loan participation interests. In addition, for investment purposes, a loan participation interest must have a par amount outstanding of U.S. \$150 million or greater at the time it is originally issued.

In computing the Fund's net asset value per Share, Rule 144A securities and loan participation interests will be valued based on price quotations and other equivalent indications of value provided by a third party pricing service.

Intra-day and closing price information for Rule 144A securities and loan participation interests is available from major market data vendors.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

(if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis and sector or industry analysis.

¹³ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. With respect to the 15% limitation on investments in illiquid securities, the Exchange notes that the Commission has approved similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.¹⁴ The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security based on the Fund's valuation procedures to oversee liquidity and valuation concerns. With respect to the proposal that loan participation interests, including bank loans, that are deemed illiquid by the Adviser be included in the limitation of 15% of net assets in illiquid assets, the Adviser has represented that it will invest generally in participation interests, including bank loans, that it deems highly liquid, with readily available prices. In reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer). In computing the Fund's net asset value per Share, Rule 144A securities and loan participation interests will be valued based on price quotations and other equivalent indications of value provided by a third party pricing service. Intra-day and closing price information for Rule 144A securities and loan participation interests is available from major market data vendors. The Commission has previously approved or published notice of effectiveness of proposed rule

¹⁴ See note 10, supra.

changes for actively-managed exchange-traded funds with respect to which loans are subject to the respective fund's 15% limitation on holdings in illiquid assets.¹⁵

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above. The Adviser represents that there is no change to the Fund's investment objective. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to the Fund's means of achieving the investment objective will permit the Fund to adjust its portfolio to allow the Fund to continue to meet its investment objectives by investing in illiquid assets and bank loans in a manner consistent with other actively-managed

¹⁵ See note 9, supra

exchange-traded funds and will enhance competition among issues of Managed Fund Shares that invest in fixed income securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to accommodate certain investments by the Fund and Exchange trading of the Shares of the Fund without delay. The Commission believes that waiving the 30-day operative delay is consistent

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

with the protection of investors and the public interest.¹⁸ As stated in the proposal, the proposed changes do not alter the Fund's investment objective. Under the proposal, the Fund seeks to hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser, consistent with Commission guidance. Thus, under the proposal only those Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser would be included in the limitation of 15% of net assets in illiquid assets, rather than all Rule 144A securities and loan participation interests, as is currently the case. According to the Exchange, the Adviser will invest generally in loan participation interests, including bank loans, that it deems highly liquid, with readily available prices. In addition, the Exchange states that in reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer). Furthermore, according to the Exchange, the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security and loan participation interest based on the Fund's valuation procedures to oversee liquidity and valuation concerns. The Exchange represents that, except for the changes in the proposal, all other facts and representations made in the Prior Release remain unchanged and that the Fund will continue to comply with all initial and

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

continued listing requirements under NYSE Arca Equities Rule 8.600. The Commission notes that it has approved the listing and trading of shares of other actively managed exchange-traded funds that are permitted to similarly invest in Rule 144A securities and loan participation interests.¹⁹ Because the proposed changes do not alter the Fund's investment objective and do not raise any novel or unique regulatory issues, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-18 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹⁹ See, e.g., Securities Exchange Act Release No. 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR-NYSEArca-2013-08) (order granting approval of proposed rule change to list and trade shares of the SPDR Blackstone/GSO Senior Loan ETF).

All submissions should refer to File Number SR-NYSEArca-2014-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2014-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).